

ATTACHMENT A

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:

Methyl Tertiary Butyl:MDL NO. 1358 (SAS)
Ether ("MTBE") :
Products Liability :
Litigation :

In Re:

City of New York v. Amerada Hess, et al.
No. 04 Civ. 3417

CONFIDENTIAL (Per 2004 MDL 1358 Order)

October 10, 2008

Videotaped Deposition of
BRUCE F. BURKE, held at the New York
City Law Department, 100 Church Street,
6th Floor, New York, New York, beginning
at approximately 2:10 p.m., before Ann
V. Kaufmann, a Registered Professional
Reporter, Certified Realtime Reporter,
Approved Reporter of the U.S. District
Court, and a Notary Public.

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<p>1 APPEARANCES: 2 NEW YORK CITY LAW DEPARTMENT 3 OFFICE OF THE CORPORATION COUNSEL 4 SUSAN E. AMRON, ESQUIRE 5 samron@law.nyc.gov 6 100 Church Street 7 New York, NY 10007 8 (212) 676-8517 9 Counsel for the City of New York 10 and the witness 11 SHER LEFF, LLP 12 NICHOLAS CAMPINS, ESQUIRE 13 450 Mission Street, Suite 400 14 San Francisco, CA 94105 15 (414) 348-8300 16 Counsel for the City of New York 17 and the witness 18 McDERMOTT, WILL & EMERY, LLP 19 LAUREN HANDEL, ESQUIRE 20 lhandel@mwe.com 21 340 Madison Avenue 22 New York, NY 10017 23 (212) 547-5400 24 Counsel for Exxon Mobil Corporation</p> <p>15 APPEARANCES: (via telephone) 16 EXXON MOBIL CORPORATION 17 WILLIAM J. STACK, ESQUIRE 18 william.j.stack@exxonmobil.com 19 P.O. Box 2180 20 Houston, TX 77252 21 (713) 656-2583 22 Counsel for Exxon Mobil Corporation</p> <p>21 PRESENT: 22 Larry Moskowitz, Videographer 23 24</p>	<p>1 DEPOSITION SUPPORT INDEX 2 3 DIRECTION TO WITNESS NOT TO ANSWER 4 Page 95 Line 12 5 Page 120 Line 20 6 Page 123 Line 02 7 Page 123 Line 17 8 9 REQUEST FOR PRODUCTION OF 10 INFORMATION/DOCUMENTS 11 Page 138 Line 12 12 Page 141 Line 16 13 14 STIPULATIONS 15 (NONE) 16 17 QUESTIONS MARKED 18 19 (NONE) 20 21 22 23 24</p>
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<p>1 EXAMINATION INDEX 2 3 BRUCE F. BURKE 4 DIRECT BY MS. AMRON . . . 6 5 CROSS BY MR. STACK . . . 43 6 REDIRECT BY MS. AMRON . 169 7 8 EXHIBIT 9 MARKED 10 Burke 11 1 Plaintiffs' Notice of De 6 12 Bene Esse Deposition of 13 Bruce F. Burke 14 2 Document entitled 12 15 "ExxonMobil Refineries - 16 1985 - 2003" 17 3 Document entitled "Kinder 27 18 Morgan Pipeline System 19 Northern California" 20 4 Document entitled "Kinder 32 21 Morgan Pipeline System 22 Southern California" 23 5 Expert Report of Bruce F. 43 24 Burke, 12/19/08 25 6 Expert Rebuttal Report of 43 26 Bruce F. Burke, 2/6/09 27 7 Expert Second Rebuttal 43 28 Report of Bruce F. Burke 29 3/16/09 30 8 Stipulation 103 31 32 33 34</p>	<p>1 THE VIDEOGRAPHER: Good 2 afternoon. We're now on the record. My 3 name is Larry Moskowitz and I'm a 4 videographer for Golkow Technologies, 5 Inc. Today's date is October 10, 2009, 6 and the time is 2:10 p.m. This video 7 deposition is being held at the New York 8 Law Department, 100 Church Street, New 9 York, New York in the matter of In Re 10 MTBE for the United States District 11 Court, Southern District of New York. 12 The deponent is Bruce F. Burke. 13 Will counsel please identify 14 themselves for the record. 15 MS. AMRON: Susan Amron from 16 the New York City Law Department for 17 plaintiffs. 18 MR. CAMPINS: Nicholas 19 Campins from Sher Leff for plaintiffs. 20 MS. HANDEL: Lauren Handel, 21 McDermott, Will & Emery for Exxon Mobi 22 defendants. 23 MR. STACK: William Stack 24 for Exxon Mobil.</p>

<p style="text-align: right;">Page 6</p> <p>1 THE VIDEOGRAPHER: The court 2 reporter is Ann Kaufmann and she will 3 now swear in the witness. 4 BRUCE F. BURKE, having been 5 duly sworn, was examined and testified 6 as follows: 7 DIRECT EXAMINATION 8 BY MS. AMRON: 9 Q. Okay. Just for the record, 10 this is a deposition being held pursuant 11 to the notice de bene esse deposition 12 that the City sent out on November 9 13 which we've marked as Exhibit 1. 14 (Above-described document 15 marked as Burke Exhibit 1.) 16 BY MS. AMRON: 17 Q. Mr. Burke, welcome back. 18 A. Thank you. 19 Q. Can you please remind the 20 jury where you are employed? 21 A. I work for Nexant based in 22 White Plains, New York. 23 Q. And to refresh everyone's 24 recollection, what is Nexant?</p>	<p style="text-align: right;">Page 8</p> <p>1 monitoring the industry and working for 2 clients, I'm either working with 3 specific facilities or I need to keep 4 track of what refiners are doing to make 5 changes. So during the course of 6 monitoring the industry, I have become 7 aware of the locations and relative 8 capabilities of most of the refineries 9 in the States. 10 Q. Have the number of 11 refineries in the United States changed 12 since 1979? 13 A. They have. They have 14 dramatically declined since '79. About 15 half of them have shut down since that 16 time period. So there were about 300 17 refineries in 1979. There's about 150 18 right now. 19 Q. And have new refineries 20 been built in the United states since 21 that time? 22 A. No. 23 Q. Now, are you familiar with 24 the oil refineries owned by Exxon Mobil</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Nexant is a consulting 2 firm. We work for the United States 3 refining and chemical industries as well 4 as the international assets of those 5 industries. And as part of our work, we 6 look at the facilities up and down the 7 supply chain, so we look at refining 8 operations, new investment requirements, 9 changes in specifications on products. 10 We review the distribution system, so 11 how products get from refineries to the 12 consumer. And we also evaluate the 13 retail end of the business. 14 Q. Okay. And during your work 15 at Nexant, have you become familiar with 16 location and ownership of refineries 17 throughout the country? 18 A. I have, yes. 19 Q. And how have you become 20 familiar with refineries in the United 21 States? 22 A. Well, it's part of my job 23 to be familiar with the assets of my 24 clients. So during the course of</p>	<p style="text-align: right;">Page 9</p> <p>1 for the period from 1985 through 2003 in 2 the United States? 3 A. I am. 4 MR. STACK: Objection, 5 relevance and objection, foundation. 6 With respect to any refineries that do 7 not serve the Queens market, we would 8 object on the grounds of relevance. And 9 with respect to the location of these 10 refineries outside of those discussed in 11 Mr. Burke's report, we would object on 12 the grounds there's no adequate 13 foundation that's been laid with respect 14 to his personal knowledge of the facts 15 or circumstances relating to the 16 location or operation of any of those 17 facilities. 18 BY MS. AMRON: 19 Q. Let me see if I can lay 20 some foundation for your knowledge. 21 What is the basis for your 22 knowledge of the location of Exxon Mobil 23 refineries in the United States since 24 the period -- since 1985?</p>

<p style="text-align: right;">Page 10</p> <p>1 A. Well, in the course of 2 doing business and working with the 3 industry, one of the tools which I 4 maintain and my company maintains is our 5 databases, which include listings of all 6 refineries in the U.S., their locations, 7 their characteristics. During the 8 course of specific engagements, where 9 appropriate, if they require looking at 10 competitive situations of, say, the 11 relative size and complexity of 12 refineries of the Gulf Coast, Exxon 13 Mobil refineries would come up in that 14 kind of situation. So over the course 15 of my career, I have become familiar 16 with where Exxon's facilities are 17 located and generally their 18 characteristics. 19 Q. And have you had the 20 opportunity to look at Exxon Mobil 21 refineries specifically in the United 22 States? 23 MR. STACK: Objection, 24 again, relevance, and also objection on</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. And you mentioned a 2 database that your company keeps with 3 information about refineries. What do 4 you use that database for? 5 MR. STACK: Objection, 6 relevance. Calls for an expert opinion. 7 A. Well, it is a database 8 which is used for a variety of 9 activities. We -- I often will look at 10 market trends in the U.S., so that 11 includes supply and demand of refined 12 products including gasoline. So in 13 doing that, I need to look at the 14 underlying supply and refinery 15 capacities that exist in different parts 16 of the country. So there's a case where 17 the database would come into use. 18 Q. And in the course of the 19 work that you've described, have you 20 become familiar with the refineries 21 owned by Exxon Mobil in the United 22 States from the period from 1985 to 23 2003? 24 MR. STACK: Objection, calls</p>
<p style="text-align: right;">Page 11</p> <p>1 the grounds that any of the testimony 2 relative to the refineries would call 3 for really the expression of an expert 4 opinion embodying specialized and 5 technical knowledge, and it is certainly 6 beyond the understanding of lay 7 witnesses and certainly beyond the 8 understanding of the percipient witness, 9 the apparent proffer for this witness 10 here. You are calling for an expert 11 opinion. We would object. 12 You can proceed to answer. 13 Q. You can proceed to answer. 14 A. I have -- the answer is, 15 yes, I have looked at specific Exxon 16 Mobil facilities from the point of view 17 of where they are located; work I've 18 done in California, for instance, where 19 I looked at each of the refineries in 20 California, their characteristics, in 21 particular their gasoline production and 22 use of MTBE, and that included the two 23 Exxon Mobil refineries during this time 24 period.</p>	<p style="text-align: right;">Page 13</p> <p>1 for an expert opinion. Relevance. 2 A. I have. 3 (Below-described document 4 marked as Burke Exhibit 2.) 5 BY MS. AMRON: 6 Q. Then let me show you 7 what we have marked as Exhibit 2, which 8 is a graphic entitled "ExxonMobil 9 Refineries - 1985-2003," and ask you to 10 explain what this graphic shows. 11 MR. STACK: Again, objection 12 to relevance. Also objection on the 13 grounds that this calls for a legal 14 opinion and as the testimony of 15 percipient witness, it is hearsay and we 16 would argue that with respect to this 17 witness, his purported percipient 18 witness testimony is nothing more than a 19 conduit for hearsay. And a substitute 20 for an expert opinion, which was not 21 proffered in a timely manner. 22 Q. You can answer. 23 A. Okay. So this exhibit 24 presents the location of ten refineries</p>

<p style="text-align: right;">Page 14</p> <p>1 in the United States, each of which was 2 owned by Exxon or Mobil up to 1999, and 3 then several of them were sold between 4 1985 and 2003. There's four at the Gulf 5 Coast, and these were presented in my 6 prior testimony where I looked at the 7 refineries in Beaumont, Baton Rouge, 8 Baytown, and Chalmette. 9 Also the two refineries in 10 New Jersey which were also covered in my 11 prior testimony at Bayway, which was 12 sold by Exxon in 1993, and Paulsboro, 13 which was sold in 1997. 14 The additional refineries 15 include Joliet in Illinois; Billings, 16 Montana; and two refineries in 17 California at Benicia and Torrance. The 18 Benicia refinery was sold in 2000. 19 Q. And prior to its sale, who 20 owned the Benicia refinery? 21 A. Exxon. 22 Q. And who owned the Torrance, 23 California, refinery between 1985 and 24 2003?</p>	<p style="text-align: right;">Page 16</p> <p>1 It is measured in barrels per day, is 2 the unit of capacity. 3 Q. And is refining capacity an 4 indication of the actual amount of 5 gasoline produced by a refinery? 6 MR. STACK: Objection, 7 relevance. Calls for an expert 8 opinion. Lack of foundation and also 9 this would be hearsay. 10 A. It's -- capacity is a good 11 indication of relative production of 12 gasoline. Each refinery, of course, is 13 specific in terms of how much gasoline 14 it produces per barrel of crude oil, but 15 on a sort of national comparative basis, 16 a larger refinery, with clearly some 17 exceptions, would produce more gasoline 18 than a smaller refinery, unless we're 19 talking about a specialized non-fuel 20 type refinery. We're basically talking 21 here about -- at least I'm talking about 22 fuel-focused refineries that are 23 primarily making gasoline and diesel and 24 jet fuel.</p>
<p style="text-align: right;">Page 15</p> <p>1 A. Mobil. 2 Q. And after the merger, was 3 that then owned by Exxon Mobil? 4 A. It was. 5 Q. Now, as part of your work 6 at Nexant, have you become familiar with 7 the capacity of refineries in the United 8 States? 9 MR. STACK: Objection, 10 relevance. Calls for an expert opinion, 11 hearsay. 12 A. Yes, I have. I mentioned 13 the database where we keep track of 14 characteristics of all refineries in the 15 U.S. That includes capacities of each 16 of those refineries. 17 Q. And can you explain what 18 the capacity of a refinery means? 19 MR. STACK: Objection, 20 relevance and calls for an expert 21 opinion. 22 A. Yes. Capacity is -- for 23 refining is a measure of how much crude 24 oil can be processed by that facility.</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. From 1985 until the merger 2 of Exxon Mobil in 1999, if you 3 considered Exxon and Mobil together, 4 where did they rank in terms of refining 5 capacity in the United States? 6 MR. STACK: Objection, 7 relevance. Calls for an expert opinion, 8 lacks foundation, and is hearsay. 9 A. I would rank the combined 10 capacity of Exxon and Mobil during that 11 time period as number one, perhaps 12 number two, but nothing below that. 13 Q. And is that, the relative 14 size of refineries and the relative 15 capacity, something that you use in the 16 course of your work? 17 MR. STACK: Objection, 18 relevance. Calls for an expert opinion, 19 lacks foundation. Calls for hearsay. 20 A. It is. As I mentioned, we 21 maintain records, databases, and models 22 of refineries throughout the United 23 States. Capacity is a key factor in 24 terms of determining production of</p>

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<p style="text-align: right;">Page 18</p> <p>1 products, including gasoline. So</p> <p>2 absolutely, knowing what capacity is is</p> <p>3 a fundamental characteristic of</p> <p>4 refining.</p> <p>5 Q. Now, after the merger of</p> <p>6 Exxon and Mobil in 1999, where did the</p> <p>7 new company, Exxon Mobil, rank in terms</p> <p>8 of refining capacity in the United</p> <p>9 States?</p> <p>10 MR. STACK: Objection,</p> <p>11 relevance.</p> <p>12 A. It was --</p> <p>13 MR. STACK: Calls for an</p> <p>14 expert opinion. Lacks foundation. And</p> <p>15 also calls for hearsay testimony from a</p> <p>16 percipient witness.</p> <p>17 A. Exxon Mobil would still be</p> <p>18 in certainly the top one or two refiners</p> <p>19 in the U.S. based on capacity.</p> <p>20 Q. Did Exxon Mobil manufacture</p> <p>21 MTBE at either of its California</p> <p>22 refineries?</p> <p>23 MR. STACK: Objection,</p> <p>24 relevance, and calls for an expert</p>	<p style="text-align: right;">Page 20</p> <p>1 part of my activities in the industry</p> <p>2 and it certainly demonstrated that both</p> <p>3 Benicia and Torrance produced MTBE</p> <p>4 gasoline from the early '90s forward.</p> <p>5 Q. And how do you use these</p> <p>6 CEC reports in the course of your</p> <p>7 business?</p> <p>8 MR. STACK: Objection,</p> <p>9 relevance, and calls for an expert</p> <p>10 opinion.</p> <p>11 A. Well, let me give you a</p> <p>12 specific example. I did work for the</p> <p>13 Department of State looking at the</p> <p>14 phaseout of MTBE in California. And</p> <p>15 part of that work was to review how</p> <p>16 refineries had used MTBE, which ones had</p> <p>17 used them, how much, and when they ended</p> <p>18 up phasing it out, its use. I also</p> <p>19 looked at which refineries had within</p> <p>20 the refineries MTBE production</p> <p>21 facilities as opposed to those who did</p> <p>22 not. So that was a specific case.</p> <p>23 But generally, again, it's</p> <p>24 part of the general monitoring of key</p>
<p style="text-align: right;">Page 19</p> <p>1 opinion.</p> <p>2 A. Well, Exxon manufactured</p> <p>3 MTBE at the Benicia refinery. They did</p> <p>4 not have a manufacturing facility for</p> <p>5 MTBE at Torrance. Both of them,</p> <p>6 however, produced MTBE gasoline at those</p> <p>7 two refineries. Torrance purchased MTBE</p> <p>8 from other sources, including imports.</p> <p>9 Q. Let me turn to -- well, let</p> <p>10 me go back to that for a second. What</p> <p>11 is the basis of your knowledge about</p> <p>12 MTBE use at the two California</p> <p>13 refineries?</p> <p>14 MR. STACK: Objection,</p> <p>15 relevance.</p> <p>16 A. Well, in California the</p> <p>17 California Energy Commission, the CEC,</p> <p>18 from the early '90s through to the</p> <p>19 phaseout of MTBE in California monitored</p> <p>20 the production of MTBE gasoline at each</p> <p>21 California refinery, and that was a</p> <p>22 series of reports that were put out on a</p> <p>23 quarterly basis. And that was, again,</p> <p>24 something that I monitored as an ongoing</p>	<p style="text-align: right;">Page 21</p> <p>1 elements of the industry. And since</p> <p>2 California is a very big market, that</p> <p>3 was a market that I would keep track of.</p> <p>4 Q. Well, let me then turn to</p> <p>5 pipelines. In the course of your work</p> <p>6 at Nexant, have you become familiar with</p> <p>7 the common carrier pipeline systems used</p> <p>8 to transport gasoline in the United</p> <p>9 States?</p> <p>10 A. I have. I have. I think,</p> <p>11 as mentioned in my prior testimony, the</p> <p>12 common carrier pipelines are critical to</p> <p>13 the movement of fuel and supply of fuel</p> <p>14 around the United States. The -- a very</p> <p>15 large amount of gasoline and other fuels</p> <p>16 is produced at the Gulf Coast, more than</p> <p>17 can be consumed there, and it needs to</p> <p>18 be moved to market, and the majority of</p> <p>19 that is done using pipelines, common</p> <p>20 carrier pipelines. And I had talked</p> <p>21 about the use of the Colonial and the</p> <p>22 Plantation pipelines in prior testimony,</p> <p>23 which run from the Gulf Coast up to the</p> <p>24 East Coast.</p>

<p style="text-align: right;">Page 22</p> <p>1 There are several major 2 pipeline systems which run up from the 3 Gulf Coast to the center of the country, 4 pipelines like the Explorer pipeline and 5 TEPPCO. 6 In California there's 7 basically two common carrier pipeline 8 systems, primary ones. Both are owned 9 by Kinder Morgan, one in the north of 10 California, one in the south. 11 Q. Could you remind the jury 12 what a common carrier pipeline is? 13 MR. STACK: Objection, 14 relevance. Calls for an expert 15 opinion. Lacks foundation. 16 A. Well, as I had reviewed in 17 my prior testimony, common carrier 18 pipelines are -- well, first, all 19 pipelines which cross states, interstate 20 pipelines, which carry petroleum 21 products are common carrier pipelines. 22 And what that means is that the pipeline 23 is required to carry refined products 24 from any supplier that meets the</p>	<p style="text-align: right;">Page 24</p> <p>1 MS. AMRON: We can go off 2 the record for a second. 3 THE VIDEOGRAPHER: We're 4 going off the record. The time is 5 2:31 p.m. 6 (Recess.) 7 THE VIDEOGRAPHER: We're 8 back on the record. The time is 9 2:33 p.m. 10 BY MS. AMRON: 11 Q. Mr. Burke, can you explain 12 how common carrier pipelines are used in 13 California? 14 MR. STACK: Objection, 15 relevance. Lacks foundation. Calls for 16 an expert opinion. 17 A. Sure. The common carriers 18 in California basically work the same 19 way that they work in other parts of the 20 country. The pipelines themselves do 21 not produce product. So what they do is 22 they take in product from refineries or 23 to a certain extent from imports and 24 they transport them. As I mentioned,</p>
<p style="text-align: right;">Page 23</p> <p>1 product -- primarily the product 2 specifications of that pipeline. 3 Essentially all of those 4 common carrier pipelines operate in a 5 commingled fashion, though they 6 certainly have the capability to operate 7 in a segregated fashion, similar to what 8 I had reviewed for the Colonial and 9 Plantation pipelines and Buckeye 10 pipelines. 11 Q. And how are common carrier 12 pipelines used in California? 13 MR. STACK: Guys, I don't 14 know what's going on, but the signal, we 15 can't hear you on this end. There's a 16 loud buzzing noise. It sounds like some 17 kind of electronic interference with the 18 phone in your room. It just kicked in. 19 It sounds like a roar. I don't know how 20 else to describe it. 21 MS. AMRON: Hang on a 22 second. We're trying to see what it 23 could be. 24 MR. STACK: Thanks, Susan.</p>	<p style="text-align: right;">Page 25</p> <p>1 common carrier pipelines, including in 2 California, operate in a commingled 3 fashion, though there is the -- there 4 certainly is some segregated shipping 5 that goes on. So fairly similar to the 6 description that I discussed in prior 7 testimony for the Colonial and 8 Plantation. 9 Q. From the period from 1985 10 through 2003, what was the major common 11 carrier pipeline in California? 12 MR. STACK: Objection, 13 relevance. Lacks foundation. Calls for 14 an expert opinion. Also vague and 15 ambiguous. We don't know what part of 16 California. 17 BY MS. AMRON: 18 Q. For the -- let me then 19 rephrase the question. From 1985 to 20 2003, was there a single major common 21 carrier pipeline that operated in 22 California? 23 MR. STACK: Objection, 24 relevance, foundation. Calls for an</p>

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<p style="text-align: right;">Page 26</p> <p>1 expert opinion. For a percipient 2 witness, this would be hearsay 3 testimony. 4 A. There are two major common 5 carrier pipelines in California. They 6 are currently both owned by Kinder 7 Morgan. There's a pipeline system which 8 is based in San Francisco, it is their 9 northern system; and then a southern 10 system, which is based in Los Angeles. 11 Q. And what is the basis for 12 your knowledge about the pipeline system 13 in California? 14 A. Well, I have periodically 15 over the years looked at the 16 distribution and shipping of products in 17 California. Several years ago I was 18 involved in looking at the Kinder Morgan 19 assets, including product pipelines. So 20 during the course of doing that, that 21 included looking at the California 22 assets and the pipeline systems there. 23 During my Department of State work, the 24 movement of gasoline in California was</p>	<p style="text-align: right;">Page 28</p> <p>1 A. Yeah. This exhibit is off 2 of the Kinder Morgan pipeline Web site, 3 I believe. It certainly looks familiar. 4 It shows the routes that 5 the Kinder -- the northern California 6 Kinder Morgan pipeline system covers, 7 and there are a number of different legs 8 to that system. So there's -- centered 9 around the San Francisco Bay area, which 10 is where these legs basically come out 11 from, gasoline is gathered in from the 12 various refineries in the San Francisco 13 Bay. There's a leg which supplies to 14 the south down to San Jose, another leg 15 which supplies over to Fresno south and 16 east, and then there is a run of pipe 17 which goes to Sacramento and then on 18 across to Reno, Nevada, and then also a 19 run which heads north when you get past 20 Sacramento up to Chico, California, so 21 serving some of those markets. 22 Basically this is an overview of the 23 Kinder Morgan northern California 24 pipeline system.</p>
<p style="text-align: right;">Page 27</p> <p>1 part of the sort of overall scope, so, 2 again, I became familiar with how 3 gasoline is moved in California through 4 the Kinder Morgan pipelines and prior 5 versions of those since Kinder Morgan 6 has bought up assets over the years. 7 Q. Let me ask you to look at a 8 graphic that has been marked as 9 Exhibit 3. 10 (Above-described document 11 marked as Burke Exhibit 3.) 12 BY MS. AMRON: 13 Q. And, first, are you 14 familiar with the pipeline depicted in 15 that graphic? 16 A. I am. 17 Q. And could you explain what 18 this graphic shows? 19 MR. STACK: Objection, 20 relevance, foundation. It calls for an 21 expert opinion and it's hearsay, or more 22 properly this witness is a conduit for 23 hearsay relative to describing what has 24 been identified as Exhibit No. 3.</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. Is this depiction of the 2 pipeline system consistent with your 3 knowledge of how the Kinder Morgan 4 pipeline system operates in northern 5 California? 6 MR. STACK: Objection, 7 relevance. Foundation as to operation 8 of the system. It calls for an expert 9 opinion and hearsay. 10 A. It is consistent. Several 11 years ago I was involved in an analysis 12 looking at the supply, how gasoline was 13 supplied to Reno, Nevada, and as part of 14 that I reviewed gasoline coming over on 15 the Kinder Morgan system, which is one 16 of the primary supply sources, and this 17 is consistent with that. 18 Q. Now, Kinder Morgan pipeline 19 in northern California, is that a common 20 carrier system? 21 A. Yes, it is. 22 Q. And from 1985 through the 23 period 2003, to your knowledge was 24 gasoline shipped on the Kinder Morgan</p>

<p style="text-align: right;">Page 30</p> <p>1 pipeline in northern California a 2 commingled gasoline product? 3 MR. STACK: Objection, 4 relevant. Lacks foundation. Calls for 5 hearsay testimony and/or an expert 6 opinion. 7 A. Yes, it was. 8 Q. And during the period from 9 1985 to 2003, to your knowledge did the 10 commingled gasoline product shipped on 11 the Kinder Morgan pipeline in northern 12 California contain MTBE? 13 MR. STACK: Objection, 14 relevance. Lacks foundation. Calls for 15 a hearsay and/or calls for an expert 16 opinion. 17 A. Well, I can comment from 18 the early '90s because from the early 19 '90s onward I would say it certainly 20 carried MTBE gasoline. Prior to the 21 early '90s the records for tracking MTBE 22 gasoline in California were not being 23 kept. As I mentioned, the California 24 Energy Commission, the CEC, began</p>	<p style="text-align: right;">Page 32</p> <p>1 southern California. Are you familiar 2 with the Kinder Morgan pipeline system 3 in southern California? 4 MR. STACK: Objection, 5 relevance. 6 A. I am. 7 Q. And, again, can you explain 8 the basis for your familiarity with the 9 pipeline system in southern California? 10 A. Sure. During the -- I had 11 mentioned the work on the Department of 12 State, which looked at the production 13 and use of MTBE gasoline in the state of 14 California leading up to the phaseout of 15 MTBE gasoline, and so during the course 16 of that, I became familiar with the 17 Kinder Morgan pipeline operations in 18 both north and south. 19 (Below-described document 20 marked as Burke Exhibit 4.) 21 BY MS. AMRON: 22 Q. Let me show you what has 23 been marked as Exhibit 4, which is a 24 graphic entitled "Kinder Morgan pipeline</p>
<p style="text-align: right;">Page 31</p> <p>1 keeping those quarterly records in the 2 early '90s and that documented the use 3 of MTBE at that point. 4 So I would say early '90s 5 forward, certainly. 6 Q. And based on your 7 experience and work with Kinder Morgan, 8 did the Exxon Benicia refinery 9 distribute gasoline in California 10 through the Kinder Morgan pipeline in 11 northern California? 12 MR. STACK: Objection, 13 relevance. Lacks foundation. Calls for 14 hearsay or calls for an expert opinion. 15 A. The answer is yes, the 16 Benicia refinery was connected to the 17 Kinder Morgan common carrier system, and 18 the basis for knowing that is that all 19 the refineries in the San Francisco area 20 were connected to that system, which I 21 had learned over the course of reviewing 22 the Kinder Morgan system on several 23 engagements. 24 Q. Let's turn then to the --</p>	<p style="text-align: right;">Page 33</p> <p>1 system, Southern California." 2 A. I got it. 3 Q. And ask you whether the 4 system that is depicted on this graphic 5 is familiar to you. 6 MR. STACK: Objection, 7 relevance. Lacks foundation. Calls for 8 hearsay. 9 A. Yes. This -- I am familiar 10 with this. Again, this, I believe, is 11 from the Kinder Morgan Web site. 12 Q. To your knowledge is this 13 an accurate depiction of the Kinder 14 Morgan pipeline in southern California 15 into Arizona? 16 MR. STACK: Objection, 17 relevant. Lacks foundation. Calls for 18 hearsay or calls for an expert opinion. 19 A. It is accurate. It is 20 showing the major characteristics of 21 this southern pipeline system. There's 22 a line supplying down to San Diego, a 23 line out to Phoenix, Arizona, and then 24 also supply up to Las Vegas. And that's</p>

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<p>1 all consistent with my understanding of 2 the Kinder Morgan system. 3 Q. And from the period from 4 1985 to 2003, was gasoline that was 5 shipped on the Kinder Morgan pipeline 6 system in southern California a 7 commingled product? 8 MR. STACK: Objection, 9 relevance. Lacks foundation. Calls for 10 hearsay of a percipient witness or calls 11 for an expert opinion. 12 A. Similar to the northern, 13 the answer I gave for the northern 14 system, from the early 1990s forward, 15 MTBE gasoline was being shipped on this 16 common -- this common carrier pipeline 17 system. And it is possible it was being 18 shipped before that; we just don't have 19 the records for that. But the CEC 20 documented its production and sale 21 within California from the early '90s 22 forward. 23 Q. During that same time 24 period, 1985 to 2003, did the commingled</p>	<p>1 A. Well, the Torrance refinery 2 is connected into the Kinder Morgan 3 common carrier pipeline system, so it 4 certainly was supplying into that. And 5 gasoline supplied by it or produced by 6 it, including from the early 1990s 7 onward, MTBE gasoline would have been 8 distributed on that system. 9 Q. Let me turn to retail sales 10 of gasoline. 11 Now, as part of your work 12 at Nexant, are you familiar with 13 nationwide gasoline retail sales figures 14 from the period from 1985 to 2003? 15 MR. STACK: Objection, 16 relevance. Calls for an expert opinion. 17 A. I am. 18 Q. And why are you familiar 19 with those figures? 20 A. Well, retail is an 21 important part of the overall supply 22 chain and the overall operations of oil 23 companies and petroleum companies in the 24 United States. So as part of tracking</p>
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<p>1 gasoline product that was shipped on the 2 southern pipeline system, the southern 3 Kinder Morgan pipeline system, contain 4 MTBE? 5 MR. STACK: Objection, 6 relevance. Lacks foundation. Calls for 7 hearsay testimony from a percipient 8 witness or otherwise calls for an expert 9 opinion. 10 A. Well -- I'm sorry. From 11 the early 1990s forward, I would say it 12 did contain MTBE. 13 Q. Now, you identified one of 14 the Exxon Mobil refineries as being in 15 Torrance, California. Did the Torrance 16 refinery distribute gasoline in 17 California using the Kinder Morgan 18 pipeline between 1985 and 2003, to your 19 knowledge? 20 MR. STACK: Objection, 21 relevance. Objection on the basis of 22 lack of foundation. Calls for hearsay 23 from a percipient witness or otherwise 24 calls for an expert opinion.</p>	<p>1 what individual companies are doing, 2 developments in the industry, it is 3 important to know who is -- who are the 4 leaders, changes in -- who have top 5 shares, who have sold facilities and so 6 forth. So as part of that, I have 7 monitored retail market share certainly 8 at the national level based on annual 9 statistics which are produced by the 10 National Petroleum News, which is, you 11 know, readily available and widely 12 circulated within the industry. 13 Q. And are those figures 14 something that you rely on in your work? 15 MR. STACK: Objection, 16 relevance. Objection, foundation. This 17 clearly calls for hearsay testimony and 18 otherwise calls for an undisclosed 19 expert opinion. 20 A. I do rely on them to the 21 extent that when I'm profiling 22 companies, looking at their activities, 23 sometimes their strategies for where to 24 do investments, I need to know their</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 38</p> <p>1 role and position in the retail end of 2 the business. So, yes, I do keep track 3 of that 4 Q. Now, before the merger of 5 Exxon and Mobil in 1999, if you take 6 Exxon and Mobil together, where did 7 their combined retail sales rank in 8 comparison to other retail companies, 9 gasoline retail companies? 10 MR. STACK: Objection, 11 relevance. Objection, foundation -- 12 lacks foundation. It calls for hearsay 13 testimony from a percipient witness or 14 otherwise calls for an undisclosed 15 expert opinion from Mr. Burke. 16 A. I would say that the 17 combined Exxon/Mobil during that entire 18 period would have had -- would have been 19 the number one -- would have had the 20 number one market share in retail sales 21 of gasoline for essentially every year. 22 It is possible toward the end of that -- 23 you said 2003? 24 Q. No, before the merger.</p>	<p style="text-align: right;">Page 40</p> <p>1 MS. AMRON: Can we go off 2 the record for one second and let me 3 consult with Mr. Campins. 4 THE VIDEOGRAPHER: We're 5 going off the record. The time is 6 2:49 p.m. 7 (Recess.) 8 THE VIDEOGRAPHER: We're 9 back on the record. The time is 10 2:51 p.m. 11 BY MS. AMRON: 12 Q. Mr. Burke, can you, based 13 on your experience and work with Kinder 14 Morgan, describe generally where the 15 northern Kinder Morgan -- northern 16 California Kinder Morgan pipeline 17 serves? 18 MR. STACK: Objection, 19 relevance. Lacks foundation. Calls for 20 hearsay testimony from a percipient 21 witness or otherwise calls for an 22 undisclosed expert opinion from 23 Mr. Burke regarding specialized and 24 technical knowledge.</p>
<p style="text-align: right;">Page 39</p> <p>1 A. Before the merger. I would 2 say they were probably number one 3 essentially every year. 4 Q. Well, then after the 5 merger, based on your familiarity with 6 nationwide gasoline retail sales, where 7 did Exxon Mobil, the merged company, 8 rank with respect to other companies for 9 retail market sales? 10 MR. STACK: Objection, 11 relevance. Lacks foundation. Calls for 12 hearsay testimony from a percipient 13 witness or otherwise calls for 14 expression of an undisclosed expert 15 opinion by Mr. Burke. 16 A. The combined Exxon/Mobil 17 share would have remained, I would say, 18 number one or number two. 19 Q. Are you familiar with 20 retail sales of gasoline stations in 21 California? 22 A. I don't specifically track 23 that data. It is not as readily 24 available.</p>	<p style="text-align: right;">Page 41</p> <p>1 A. Well, the northern system 2 basically serves all the communities 3 around where the pipelines -- the 4 pipeline system goes, so that includes 5 San Francisco, though there is a fair 6 amount that is supplied directly from 7 refinery terminals there. But as you 8 get further away from San Francisco 9 where the refineries can reach, the 10 product is moving, gasoline is moving on 11 the pipelines. 12 So really the northern part 13 of California across to, say, Lake 14 Tahoe, the pipeline goes through to 15 Reno, Nevada. So there's some supply 16 into Nevada. So it's basically those 17 areas. 18 Q. And with respect to the 19 southern California Kinder Morgan 20 pipeline, could you describe what area 21 that pipeline serves? 22 MR. STACK: Objection, 23 relevance. Lacks foundation. Calls for 24 hearsay testimony from a percipient</p>

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<p>1 witness or otherwise calls for Mr. Burke 2 to express an undisclosed expert opinion 3 of specialized and technical knowledge. 4 A. Well, in southern 5 California, again, the Kinder Morgan 6 pipeline system would supply communities 7 and areas around where the pipelines 8 go. There are terminals located along 9 the various legs of the pipeline. So 10 the pipeline will supply down to San 11 Diego, across basically through southern 12 California over to Las Vegas across to 13 Phoenix. So basically it is like any 14 pipeline; it supplies along its route. 15 Q. And did the route of the 16 two pipelines remain basically the same 17 between 1985 and 2003? 18 MR. STACK: Objection, 19 relevance. Lacks foundation. Calls for 20 hearsay testimony from a percipient 21 witness or otherwise calls for an 22 undisclosed expert opinion from 23 Mr. Burke. 24 A. There have been incremental</p>	<p>1 Q. With regard to the 2 documents we have marked, Exhibit No. 5, 3 is that an expert report that you 4 prepared in the New York City versus 5 Amerada Hess case? 6 A. Yes, it is. 7 Q. Exhibit No. 6 dated 8 February 6, 2009, is that a rebuttal 9 expert report that you prepared in the 10 City of New York versus Amerada Hess 11 case? 12 A. Yes, it is. 13 Q. And Exhibit No. 7 dated 14 March 16, 2009, is that a second expert 15 rebuttal report that you prepared in the 16 case captioned City of New York versus 17 Amerada Hess? 18 A. Yes, it is. 19 Q. Now, in the context of 20 preparing those reports, you were 21 providing expert opinions concerning 22 specialized and technical knowledge that 23 you have about the refining and 24 distribution of petroleum products into</p>
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<p>1 investments and so forth, which is 2 normal in a -- big systems like this. 3 But essentially the answer is yes, the 4 primary distribution system and pipeline 5 routes have been the same. 6 MS. AMRON: I have no 7 further questions. 8 MR. STACK: I will ask my 9 colleague to mark the reports prepared 10 by Mr. Burke. His December 19, 2008, 11 report should be marked Exhibit 5. His 12 February 6, 2009, report should be 13 marked as Exhibit 6. And his March 16, 14 2009, report should be marked as 15 Exhibit No. 7. If we can take a moment 16 to do that and we will proceed further. 17 (Above-described documents 18 marked as Burke Exhibit 5, Burke Exhibit 19 6, and Burke Exhibit 7.) 20 CROSS EXAMINATION 21 BY MR. STACK: 22 Q. Good afternoon, Mr. Burke. 23 How are you? 24 A. Fine. Good afternoon.</p>	<p>1 the northeastern United States, 2 particularly Queens; am I right? 3 A. That is correct. 4 Q. And with regard to the 5 expert reports that we've identified, at 6 any point in time in any of those 7 reports, did you disclose any opinions 8 concerning the ranking of Exxon Mobil's 9 refining capacity for the period 1985 to 10 2003? 11 A. This is national ranking? 12 Q. Correct. 13 A. No, I did not. 14 Q. At any point in time did 15 you identify all of the Exxon Mobil 16 refineries in the United States outside 17 of those in the Gulf Coast, Baton Rouge, 18 Chalmette, Beaumont and Baytown and the 19 Paulsboro and Bayway facilities? 20 A. No. They are the only ones 21 that I identified. 22 Q. And with respect to the 23 reports that you prepared in this case, 24 Exhibits 5, 6, and 7, did you at any</p>